

FILED
COURT OF APPEALS
DIVISION II

2014 NOV 17 PM 1:44

STATE OF WASHINGTON

No. 45927-2-II

BY: 

DEPUTY

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

GWYNETH POPE and DANIEL STACEY,

Appellants/Cross-Respondents,

v.

BRUCE and PATRICIA GARDNER,

Respondents/Cross-Appellants.

REPLY BRIEF OF RESPONDENTS/CROSS-APPELLANTS

VANDEBERG JOHNSON &
GANDARA, LLP

Mark A. Hood, WSBA #20152
Daniel C. Montopoli, WSBA #26217
Attorneys for Respondents/
Cross-Appellants

1201 Pacific Avenue, Suite 1900
P. O. Box 1315
Tacoma, WA 98401-1315
Telephone: (253) 383-3791

**REPLY TO APPELLANTS' RESPONSE TO THE GARDNERS'
CROSS APPEAL REGARDING THE DENIAL OF THEIR
CR 11 MOTION**

In their cross-appeal, respondents/cross-appellants Bruce and Patricia Gardner have challenged the superior court's denial of their motion for CR 11 sanctions. Brief of Respondents/Cross-Appellants at 22-23. In support of their cross-appeal, the Gardners identified *eight* instances where Gwyneth Pope, Daniel Stacey and their counsel engaged in improper conduct, with the most egregious being the continued pursuit of damages unrecognized in Washington. Brief of Respondents/Cross-Appellants at 23-24.

In their response to the Gardners' cross-appeal, Pope and Stacey cite the wrong standard for reviewing CR 11 motions. Appellants' Reply Br. at 10. In their brief, Pope and Stacey incorrectly put forth the standard for an award of attorneys fees instead of the abuse of discretion standard that governs CR 11 motion. *See Biggs v. Vail*, 124 Wn. 2d 193, 197, 876 P.2d 448 (1994) ("The standard of appellate review for [CR 11] sanctions is the abuse of discretion standard.").

Furthermore, Pope and Stacey's response does not contest the improper conduct identified by the Gardners. Appellants' Reply Br. at 10. Thus, Pope and Stacey have conceded the factual basis supporting the Gardners' motion for CR 11 sanctions.

Moreover, Pope and Stacey fail to put forth *any* evidence or argument to support the superior court's denial of the Gardners' CR 11

motion. Because substantial and uncontroverted evidence supports the Gardners' CR 11 motion and because Pope and Stacey have failed to put forth any argument or evidence to the contrary, this Court should reverse the superior court's denial of the Gardners' CR 11 motion.

RESPECTFULLY SUBMITTED this 17 day of November, 2014.

VANDEBERG JOHNSON &
GANDARA, LLP

By 

Mark A. Hood, WSBA #20152

Daniel C. Montopoli, WSBA #26217

Attorneys for Respondents/

Cross-Appellants

CERTIFICATE OF SERVICE

The undersigned makes the following declaration under penalty of perjury as permitted by RCW 9A.72.085.

I am a legal assistant for the firm of Vandenberg Johnson & Gandara, LLP. On the 7th day of November, 2014, in the manner indicated below, I caused a copy of:


REPLY BRIEF OF RESPONDENTS/CROSS-APPELLANTS

to be served, via Legal Messenger, on Counsel for the Appellants:


Desiree S. Hosannah
Hosannah Law Group, PLLC
7403 Lakewood Drive, Suite 5
Lakewood, WA 98499

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 7th day of November, 2014.



Rachel Schweinler

FILED
COURT OF APPEALS
DIVISION II
2014 NOV 17 PM 1:44
STATE OF WASHINGTON
BY 
DEPUTY